

Harry Potter and the Tower of Power

(with apologies to J. K. Rowling)



The Wizing Wireless Network (WWN) determined that they needed a new antenna to be able to communicate with wizards world-wide and they decided to locate it in Godric's Hollow, the center of all things wizardry. The Godric's Hollow Town Meeting voted to authorize the Board of Selctwizards to enter into a lease agreement to locate a new tower on the old Quidditch field, owned by Godric's Hollow, in a zone where towers are not allowed. Harry Potter, being the enterprising young wizard that he is, learned of the need for a new communication facility and sought approval for a tower of his own in the same zone where towers are not allowed. This is a tale of the power struggle that ensued between Harry and the Board of Selctwizards.

Roles:

Harry Potter has a lease agreement with WWN and applied for a tower arguing that his variance should be granted because he meets all 5 criteria and specifically that the tower is “not contrary to the public interest.” The public interest is that which is expressed in the purpose of the ordinance.

- (1) there will be no decrease in the value of surrounding properties;
- (2) **granting the variance would not be contrary to the public interest;**
- (3) denial of the variance would result in unnecessary hardship to him because;
 - i. The zoning restriction as applied interferes with his reasonable use of the property, considering the unique setting of the property in its environment.
 - ii. No fair and substantial relationship exists between the general purposes of the zoning ordinance the specific restrictions on the property and
 - iii. **The variance would not injure the public or private rights of others.**
- (4) by granting the variance substantial justice would be done; and
- (5) the use will not be contrary to the spirit and intent of the ordinance.

Selectman Lloyd Voldemort presented convincing evidence that the public interest of the town was expressed by the citizens at the Town Meeting when they previously voted to enter into a lease agreement to locate a telecommunications facility on the old town Quidditch field. The town warrant and the existence of a lease agreement with the town for a telecommunications facility are both relevant to the question of public interest. The legislative body of a town is the ultimate law and policy making body and when the citizens vote as a legislative body, they express the public interest of the town.

Minerva McGonagall, world-renowned zoning expert, is a professor of public policy (and transfiguration) at the prestigious Hogwarts School and spoke in favor of the application. To be contrary to the public interest or injurious to the public rights of others so as to justify the denial of the variance, the variance must unduly, and in a marked degree conflict with the ordinance such that the variance violates the ordinance's basic zoning objectives. The town meeting vote was not an expression of public interest in such that the variance should be denied. In addition, this independent constituent of the 5 part variance test is coextensive with the “will not injure the public rights of others” prong of the use variance hardship test and it has been demonstrated that the public rights of others will not be harmed by the granting of the variance and allowing Harry Potter to build his tower.

Draco Malfoy abuts the Potter land spoke against the application. Draco has had a long running feud with Harry stemming back to their days at boarding school together, a shadowy past having something to do with potions and spells. He believes the town meeting vote truly was an expression of public interest. The citizens of Godric’s Hollow said what they wanted to have happen regarding towers and expressed that by way of their vote and the public rights will be harmed since the public voted to authorize the Selectwizards to enter into a lease agreement for a tower on the old Quidditch field.

Facts:

- There is no RSA 12-K issue. This tower cannot be seen from any other surrounding town.
- Both lots are located in the R1 zone where towers are not permitted.
- The application for the tower conforms in all other aspects; there are no dimensional violations.
- All public and abutter notices were given properly. There are no procedural defects.
- Harry successfully argued on the four other variance criteria. This case focuses on the “public interest” criteria.
- This project will require a site plan review and Harry is prepared to apply to the Planning Board following the granting of the variance.
- Everything is in conformance with the Federal Telecommunications Act of 1996.

The following is an excerpt from the 2007 Godric’s Hollow Town Report:

Article 12

To see if the town of Godric’s Hollow will authorize the board of Selectwizards to enter into an agreement with the Wizards Wireless Network to establish and maintain a telecommunications tower with the associated ancillary equipment on the old Quidditch field.

In favor – 345

In opposition – 292

Excerpts from the Godric's Hollow Zoning Ordinance

Purpose and Authority

The zoning, building regulations and districts, as set forth in this Ordinance, are adopted pursuant to RSA 674:16 and are for the purpose of promoting the public health, general welfare and safety of the Town of Godric's Hollow; to lessen congestion in streets; to secure safety from fires, panic and other dangers; to provide adequate light and air; and to prevent overcrowding of land due to the undue concentration of population, as provided for by Chapter 674, of the New Hampshire Revised Statutes Annotated, as may be amended.

The further purpose of the Zoning Ordinance of the Town of Godric's Hollow is to implement the goals and objectives of the orderly development and growth of the Town of Godric's Hollow as set forth in the Town's Master Plan as adopted, and further revisions of the Master Plan as the needs of the Town dictate.

Zone R1 - General Residential and Agricultural District

5.3.1 Purpose

This district is intended to recognize the unique scenic, historic, rural and natural characteristics of this portion of the Town of Godric's Hollow, while encouraging development in this area in a manner, which will protect these important characteristics. This district has the concomitant purpose, deemed by the Town as requiring protection, of encouraging and protecting farms and agricultural operations in this portion of the Town of Godric's Hollow.

5.3.2 Permitted Uses

- 5.3.2.1 Single-family and duplex dwellings
- 5.3.2.2 Open Space Development. (See Article 6)
- 5.3.2.3 Home Occupation/Home Business
- 5.3.2.4 Churches and other similar places of worship
- 5.3.2.5 Educational Institutions - public or private - offering general and/or specific educational courses. (Requires Site Plan Review)
- 5.3.2.6 Kindergarten and child care centers
- 5.3.2.7 General farming and forestry activities (See Section 4.8 - Farming).
- 5.3.2.8 Private residential accessory uses or buildings including private garages provided all other lot requirements are satisfied
- 5.3.2.9 Manufactured housing dwellings on individual lots provided they are placed on a permanent foundation and their placement in all respects complies with this Ordinance and any building codes in force at the time of placement. Clustering of manufactured housing dwellings is specifically prohibited in the Town of Godric's Hollow
- 5.3.2.10 Clubs, except whose chief activity is a service customarily carried on as a business

APPLICATION FOR A USE VARIANCE

To: Board of Adjustment,
Town of Godric’s Hollow

Do not write in this space:
Case No: 1-4-26-08
Date filed: 4/15/08

(signed – ZBA)

Name of applicant: **Harry Potter**
Address: **9 3/4 Hogsmeade Road, Godric’s Hollow, NH 30303**
Owner: **same**

(if same as applicant, write “same”)

Location of property: **9 3/4 Hogsmeade Road – Map 3, block 12, lot 145**
(street, number, sub-division & lot number)

NOTE: This application is not acceptable unless all required statements have been made. Additional information may be supplied on a separate sheet if the space provided is inadequate.

APPLICATION FOR A USE VARIANCE

A variance is requested from article V section 5.3.2 of the zoning ordinance to permit **A 90’ tall wireless telecommunications facility in a zone where it is not a permitted use.**

Facts supporting this request:

1. The proposed use would not diminish surrounding property values because: **property values will actually increase because of improved telecommunication coverage.**

2. Granting the variance would not be contrary to the public interest because: **the public interest is that which is enshrined in the zoning ordinance.** “This district is intended to recognize the unique . . . natural characteristics of this portion of the Town of Godric’s Hollow, while encouraging development in this area in a manner, which will protect these important characteristics.”

3. Denial of the variance would result in unnecessary hardship to the owner because:
 - a. the zoning restriction as applied to the property interferes with the reasonable use of the property, considering the unique setting of the property in its environment such that: **this is the highest area of town and there are no other towers nearby and a 90 foot tower is a reasonable use.**
 - b. that no fair and substantial relationship exists between the general purposes of the zoning ordinance and the specific restriction on the property because:

a 90 foot tower will not impact the natural characteristics of this portion of the town.

c. the variance would not injure the public or private rights of others since: what ever public or private right that exist before the development will still exist after the tower is completed.

4. Granting the variance would do substantial justice because: without the variance, I would not be able to complete the project as planned and communication between all wizards world-wide will be negatively impacted.

5. The use is not contrary to the spirit of the ordinance because: all other dimensional and use controls will continue to effect this property and the overall zoning scheme of Godric's Hollow is not impacted.

Applicant: *Harry Potter*
(Signature)

Date: *April 14, 2008*